
Testimony of
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Before the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE
PROTECTION & CYBERSECURITY

Regarding
REFORMING HAZMAT TRUCKING SECURITY

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Submitted by



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Good afternoon Chairman Lungren, Congresswoman Sanchez, and members of the Subcommittee. My name is Michael Laizure. I am the owner of Time Critical Ordnance Transportation and hail from College Place, Washington. It is my privilege to be here today on behalf of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 130,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 190,000 individual heavy-duty trucks. Owner-operators represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

The Association actively promotes the views of small business truckers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable business environment and safe working conditions for commercial drivers. The TSA's hazardous materials endorsement and security threat assessment process directly affects owner-operators, motor carriers and professional drivers, including members of OOIDA.

I have been a truck driver for more than 13 years, the past 10 as an owner-operator. I drive between 120,000-140,000 miles each year throughout the country. In my trucking operation I use a specialized trailer and equipment to haul a wide variety of loads. Roughly 50 percent of those loads would be classified as hazardous materials and much of that would be considered as "high hazmat" or security sensitive materials. I have been through numerous background checks and have been cleared to haul loads for the Department of Defense, the Department of Energy and other federal agencies. I have hauled various sorts of chemicals, weapons, ammunition and radioactive materials as well as some other materials that I am not at liberty to discuss.

The USA PATRIOT Act of 2001 contained a provision requiring background checks for individuals operating motor vehicles transporting hazardous materials. The TSA took on this responsibility initiating a security threat assessment requirement that has caused a considerable number of problems state administrators, the trucking industry and the shipping community that depends on that industry. Initially the TSA did a name based check on all present hazmat endorsement drivers, but have since instituted an arduous assessment process that has required a new system to be put in place by state governments and federal contractors to complete fingerprinting and background checks.

Security Threat Assessments for Hazardous Materials Endorsements

Small business truckers believe that the security threat assessment process that has been put in place by the TSA for general hazmat endorsements are an overreaching solution to a problem that has not been fully identified, and for which truckers are saddled with unnecessary burdens and expenses.

From my standpoint, what good does it do to check the backgrounds of U.S. citizens who have held a commercial drivers license for more than 10 or 20 years? There must be a better way of identifying a smaller population of truckers that must go through a background check, or at least exempting a significant part of the population where there is little if any chance of finding potential terrorists. Long-time drivers are particularly offended by the suggestion that they need to go through such background checks. Hasn't TSA figured out a way to identify persons who are more likely than not to be terrorists?

TSA's background check/security threat assessment system is cumbersome and problematic for all involved parties. The chief complaints that OOIDA hears from drivers about the present system is the shortage of facilities, available times of operation for the facilities and the amount of time necessary to get results. In addition, substantial out-of-pocket costs and lost revenue are commonly voiced concerns.

The program was conceived without understanding the unique challenges of the truck driving population. Even today, after several months and a loud chorus of complaints from truck drivers, the fingerprint locations are often at sites hundreds of miles from the driver's home or terminal. The sites are often located in areas where large trucks are not allowed to venture or park and are only open at the prime driving time for drivers.

My co-driver had to have the background check done recently for TSA for his hazmat endorsement. In the state of Washington there are only two places provided by the TSA. The closest facility for him to complete the process was roughly 170 miles away from his home.

The TSA also never considered that driving to and from the fingerprint location as well as the time involved in the process often counts against the federal hours-of-service regulations that the drivers must abide by and significantly infringe upon their income.

Fees collected by States or TSA's contractors at the time of application and fingerprinting total from \$94 to \$134. But that is certainly not the only cost incurred by truck drivers, particularly owner-operators like myself. Everyday that my truck is not rolling with a paying load, my business is losing more than \$1,000 in revenue. With the best-case scenario for going through the security threat assessment process that TSA has developed, I will lose two days of income - a day for application and fingerprinting, another for testing. Delays in response from the TSA or any other bumps in the road that are somewhat common for this process will increase the potential loss of income.

While OOIDA acknowledges a provision was included in the recently passed highway bill to prompt the agency to look further into and potentially address the adequacy and availability of finger printing locations, TSA's track record in understanding the problems faced by drivers does not leave OOIDA with significant hope. Using local law enforcement agencies for the collection of fingerprints and background information (already used by the Department of Defense, the Department of Energy and others) would certainly help to diminish these problems.

OOIDA also receives numerous complaints about the redundancy of background checks that many truck drivers must go through. I only half jokingly say that I have been through so many

background checks that I might as well publish my fingerprints. In the course of my business, I personally have completed several background checks and been fingerprinted six different times.

Even though I have been cleared by the Department of Defense, the Department of Energy and other federal agencies to haul highly specialized and security sensitive loads, I will also have to make the same 340 mile roundtrip drive as my co-driver to a TSA associated facility to be fingerprinted again and to go through yet another background check.

Again, OOIDA acknowledges a provision was included in the transportation reauthorization bill calling for the agency to report back to Congress on their plans to eliminate duplicative federal background checks, however interactions with TSA staff thus far seem to indicate a mindset that there are no equivalent background checks being conducted. The Association is somewhat encouraged that the TSA has recently said it would combine hazmat checks with the Transportation Worker Identification Card (TWIC) background process.

Focusing TSA on Security Sensitive Hazardous Materials

While we do not fault lawmakers or federal agencies for their rapid response to the tragedy of 9/11, the background check requirement for hazmat drivers contained in the Patriot Act was overly broad in its scope toward existing veteran hazmat drivers while it seriously missed the mark in addressing some of the more obvious or likely ways a commercial vehicle could be used to do great harm.

The typical owner-operator member of our organization has nearly twenty years of experience driving trucks. They are proven professionals, driving safely and responsibly meeting the needs of our nation's citizens. Well over 2 million of these Americans and their fellow drivers will have to undergo background checks when their current commercial drivers licenses (CDLs) come up for renewal next and at subsequent renewals thereafter.

OOIDA does not believe these veteran drivers are likely to turn into terrorists nor do we believe that most of the hazmat cargoes they transport would have any appeal to terrorists. By requiring them to undergo TSA background checks, scarce resources in time and money are simply wasted with no corresponding benefit in reducing the likelihood of a terrorist incident.

OOIDA strongly supports the concept of narrowing TSA's security threat assessments to focus on individuals wishing to haul hazardous materials that have been deemed as security sensitive by amending the Patriot Act's hazmat background check requirements. There are intensive background check/security assessment processes for truck drivers already being utilized by other federal agencies. Integrating those background checks with the TSA and allowing agencies to look to one database for drivers with security sensitive clearance is not only consistent with principles promoted by the 9/11 Commission, but it will also save the government and private individuals both time and money.

A general hazardous materials endorsement for loads that are not classified as "Security Sensitive" should be preserved in the CDL licensing process for truck drivers. Hazardous materials that are not deemed to be security sensitive do pose safety risks to truck drivers,

dockworkers, the general public and first responders. OOIDA believes that along with mandated training and increased testing requirements for those wishing to obtain a Commercial Drivers License, compulsory training in the handling and transporting of non-security sensitive hazardous materials must also be a part of the licensing/endorsement process.

Foreign Drivers Operating in the United States

Allowing foreign drivers to essentially be exempt, such as Canadian drivers, because they have their own standards and not recognizing that the Department of Defense, C-TPAT and FAST have rigorous standards is completely unjustified. Accepting Mexican drivers without background checks is unconscionable. To date, there are no known background checks for truck drivers used in Mexico. This implies that foreign drivers are less likely to be terrorist than American drivers. The rationale used to justify allowing non-citizens and non-permanent residents the right to obtain a hazmat endorsement is based on economics and not security. It is no secret that large companies in the U.S. trucking industry are pursuing cheap foreign labor to fill driver's seats.

It makes no public policy sense to allow persons who are not citizens or permanent residents to obtain HME or haul hazardous materials without a properly obtained HME. OOIDA opposes allowing non-citizens and non-permanent residents, including Mexican and Canadian drivers, the ability to possess an HME or haul hazardous materials with a U.S. issued HME. It is grossly unfair to U.S. drivers to allow persons whose backgrounds cannot be effectively checked to have the same rights and privileges as U.S. drivers.

OOIDA agrees with other organizations in the industry that the issue of Mexican and Canadian drivers= compliance with these rules must be resolved before the HME threat assessment requirement be finalized. OOIDA sees no rationale, from a fairness and public policy standpoint, to give persons from foreign countries an exception to this rule. OOIDA understands that Canada may have a similar security check for its drivers in place. But an analysis must be made, with public comment, comparing the two systems before the TSA can determine that the Canadian system is an adequate substitute for U.S. rules. OOIDA is unaware of any such system in Mexico, and if there were, would consider its accuracy suspect.

Even if the TSA were to allow these foreign drivers to apply for a U.S. hazmat endorsement, OOIDA does not believe that TSA would have access to sufficient information from other countries to perform a threat assessment equivalent to those performed on U.S. drivers. This inability of TSA to perform an adequate threat assessment on foreign drivers is also the basis for OOIDA=s concern about TSA=s loosening of the immigration status requirement.

The TSA amended its original rulemaking to weaken the original hazmat threat assessment rule to allow non-citizens and non-permanent residents to obtain an HME. In justifying the modification, TSA made no analysis based on homeland security policy that non-citizens and non-permanent residents may be granted HMEs without any diminution in security. The only issues stated by the rulemaking are that these persons are legally allowed to work in the United States, that they have properly obtained a CDL, and that the trucking industry is in search of

cheap labor. None of these issues bear on the risk that this population may or may not pose to homeland security.

The fact that a person has come into this country recently gives that person a greater likelihood that they will “survive” a HME background check. The TSA likely has access to more information on the background of an individual who has spent their entire life or a significant amount of time here. How will TSA know whether that a person who has come into this country recently has committed crimes or acts in their previous country that would disqualify them from holding an HME? This is just the kind of advantage a terrorist may try to exploit. The focus of Homeland Security to protect our country against threats from foreign persons underscores the seriousness of this issue. How can the TSA justify allowing foreign persons whose backgrounds they cannot properly examine to operate 80,000 pound vehicles, let alone those loaded with materials that have the potential to cause great harm?

Vulnerability of Hauling Hazardous Materials

The central problem with hazmat background checks is that they will, in no way, address the greatest vulnerability of the trucking industry to terrorists. As someone who regularly hauls hazardous materials loads, I believe it is also important to point out some of the regulations and practices within the trucking industry that leave drivers vulnerable to terrorist attacks.

While there is evidence and a past history of terrorists using trucks as weapons, OOIDA does not believe that persons who wish to obtain a truck and hazardous materials to commit a terrorist act need or will bother to get a hazmat endorsement or even a CDL. Truckers believe the most likely way that persons will obtain a truck and hazardous materials is to steal or hijack them at an unsecured location. This includes at traffic lights and at the out-of-the-way places across the country that truckers find to park their truck when their hours-of-service are exhausted and the rest areas and truck stops are full.

The lack of secure and safe places for trucks to park, in many areas around the country, when a driver needs to sleep or rest, is a significant vulnerability for hazmat transportation. A terrorist intent on obtaining a truck containing hazardous materials will have a much easier time and spend fewer resources in stealing a truck than he will bothering to get a CDL and hazmat endorsement. This problem remains entirely unaddressed by TSA and FMCSA. Congress did pass a pilot program related to increasing safe and secure truck parking in the highway bill, a small step in the right direction.

Federal regulations for certain hazmat loads require that a placard be posted on the sides of the trailer containing that load. The placarding of a trailer provides first responders with information on the level of danger and assists them in knowing what measures are needed to respond to a potential emergency should the truck become involved in an accident. This is legitimate and important information, however, anyone with an Emergency Response Guide (ERG) can look up the code on the placard and have a fairly good idea of the contents of that load. An ERG can be purchased at most truck stops. The placarding requirement essentially equates to advertising loads that have the potential to cause significant damage. Some system or coding process should

be instituted that provides appropriate safety information to first responders, but does not provide an easy target for someone with malice in their heart.

If I am targeted by someone intent upon seizing my truck and trailer, there is little I can do to stop them. Ironically, I have clearances to carry just about anything there is to haul in the U.S., but I cannot carry a weapon in the cab of my truck. If someone sticks a gun in my face, I've got two choices and I'm not the one that gets to make them. My truck is equipped with a panic button that is supposed to cause the equivalent of an "officer down" response on the federal level when it's pushed. However, by all accounts that I am aware, the timeliness of responses by local, state and federal entities to engaged panic buttons are questionable at best.

Finally, there have been some proposals to require the GPS tagging of hazmat trucks. Truckers are truly offended by the idea of the government watching their every move. Isn't it the hazardous materials that you would most like to keep track of? Hazardous materials can travel across several modes of transportation. Shouldn't any electronic monitoring be of the materials themselves? Tracking the truck won't be of much use should the materials be stolen from the truck, or the trailer is detached and stolen from the tractor. If hazardous material are taken from the truck or go missing, finding the truck is no guarantee of finding the materials. Track the materials and you will find the materials. If you consider electronic monitoring of hazardous materials, OOIDA suggests that to tag the materials would be far more effective and impose on driver privacy far less.

Conclusion

Although there are some significant security vulnerabilities in the trucking industry, there are steps that the federal government can take towards making the transport of hazardous materials by truck more secure overall without adding unnecessary burdens and expenses on itself or commercial motor vehicle operators. Focusing the resources of the Transportation Security Administration on ensuring that individuals with red flags in their backgrounds are not being afforded access to haul security sensitive hazardous materials is an excellent starting point. There are intensive background check/security assessment processes for truck drivers already being utilized by other federal agencies. Integrating those background checks with the TSA and allowing agencies to look to one database for drivers with security sensitive clearance is consistent with both the principles promoted by the 9/11 Commission and the mandates of the recently passed highway bill. It will also save the government and private individuals both time and money.

Hazardous materials that are not deemed to be security sensitive do pose safety risks to truck drivers, dockworkers and first responders. A general hazardous materials endorsement for loads that do not qualify, as "Security Sensitive" should be maintained in the licensing process for truck drivers. Along with mandated training and increased testing requirements for those wishing to obtain a Commercial Drivers License, compulsory training in the handling and transporting of non-security sensitive hazardous materials must be a part of the licensing/endorsement process.

Until the TSA has the ability to complete background checks on Mexican, Canadian and other truck drivers of foreign origin that are at the very least as stringent and comprehensive as those being completed on American drivers, foreign truck drivers should not be provided with clearance to haul security sensitive hazardous materials. As was suggested with non-security sensitive hazardous materials, non-citizen and non-permanent resident truck drivers should be required to complete comprehensive training in the handling and transportation of hazardous materials before they are allowed to haul those loads within our country's borders. Additionally, the training, assessment and background checking standards should be increased for all individuals wanting to attain a U.S. commercial drivers license who are not American citizens.

The federal government should also review regulations and industry practices to diminish the vulnerabilities of trucks transporting all types of hazardous materials, especially those that may be used as weapons against the American people.

Chairman Lungren, Congresswoman Sanchez, and members of the Subcommittee, thank you for providing me with this opportunity to testify on behalf of the members of the Owner-Operator Independent Drivers Association.

I look forward to answering questions from the members of the Subcommittee and providing you with the perspective of a small businessman and driver behind the wheel.